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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

In the Matter of the Application of  
PacifiCorp by and Through Its Rocky  
Mountain Power Division, for Approval of  
a Solicitation Process for an All Source  
Resource for the 2016 Time Period

Docket No. 11-035-73

**REPLY COMMENTS OF ROCKY  
MOUNTAIN POWER**

Rocky Mountain Power, a division of PacifiCorp (“Rocky Mountain Power” or “the Company”), hereby submits these reply comments.

Concurrent with the filing of these reply comments, Rocky Mountain Power has submitted a revised, final draft All Source Request for Proposals for the 2016 Time Period (RFP). The final draft RFP incorporates changes based on comments from the Division of Public Utilities (Division), Office of Consumer Services (Office), Utah Association of Energy Users (UAE) and comments from the Utah Independent Evaluator (Merrimack Energy, Inc.) (IE) filed with the Public Service Commission of Utah on November 28, 2011. The Company has filed both clean and redlined versions of the main RFP document, and a redlined version of Attachment 18.

The following reply comments (1) outline the revisions the Company made in the final draft RFP and (2) address all comments from intervening parties and the IE.

### **A. Revisions to the Final Draft RFP (12/07/11 Version)**

1. *Clarification to Section 6 “Calculation of the Price Score”*: The Company has clarified Section 6, Calculation of the Price Score, as it was not the Company’s intention to make any changes from the prior request for proposal, as follows:

“The price score will be calculated for each proposal (and each alternative as applicable) using a market ratio metric. The market ratio will be expressed as a percentage and will be calculated by dividing the nominal levelized PVRR of the expected energy value, expressed on a \$/kW-mo basis, into the nominal levelized PVRR of proposal costs, expressed on a \$/kW-mo basis. A market ratio less than 100% indicates that the PVRR of proposal costs are lower than the equivalent market alternative, and therefore favorable to customers. The market ratio will be used to assign a price score of between zero and 70% to each proposal (and each alternative as applicable) as set forth in the table below...” *See Redlined RFP, page 50.*

2. *Addition to Section 6(B), The Evaluation Process, subsection (c), Total Score (up to 100%)*: The Company has modified this subsection by adding the following paragraph after (c) Total Score (up to 100%) of Section 6(B):

“The Company will quantify whether a proposal exceeds the 10% cost increase limit using the RFP Base Model, which is the model used to establish the initial shortlist. The nominal levelized present value revenue requirement of both fixed and variable costs, quantified on a \$/kW-mo basis, will be calculated consistent with the best and final pricing offered by the Bidder and divided by the same metric calculated consistent with the original pricing. The 10% cost increase limit will have been exceeded if the result of this calculation

exceeds 1.10, which would reflect a cost increase in excess of 10% relative to the original proposal.” See Redlined RFP, page 56.

3. *Modification to Meaning of “Material Litigation”*: The Company has modified Section H.3., Minimum Eligibility Requirements for Bidders, by removing the \$5 million threshold. The Company will work with the IE to determine if the Bidder should be excluded from the RFP in the event the Bidder is threatening or in litigation with the Company. See Redlined RFP, page 34.

4. *Addition of Indexing of Operation and Maintenance Costs Language*: The Company has modified Section 5.B., Price Information, relating to fixed and variable O&M by adding the following:

- The Bidder – specified fixed O&M payment (\$/kW-mo)
  - This value can be a fixed value or indexed to the Consumer Price Index, the Gross Domestic Product, or a bidder-supplied fixed rate.
- Variable O&M (\$/MWh)
  - This value can be a fixed value or indexed to the Consumer Price Index, the Gross Domestic Product, or a bidder-supplied fixed rate.

See Redlined RFP, page 42.

5. *Clarification of Deferral/Acceleration under Section 2, “Resource Alternatives and Proposal Characteristics, Flexibility of Proposals”*. The Company has modified Section 2, Resource Alternatives and Proposal Characteristics, subsection Flexibility of Proposals, to clarify that PacifiCorp will have the ability to accelerate the in service date of the contract, as follows:

“PacifiCorp is interested in proposals which offer PacifiCorp flexibility in terms of the commencement date of delivery in the contract and which provide PacifiCorp the ability to defer or accelerate the in-service date of the contract or buy-out the contract at its option. The Company will only allow Bidders to defer or accelerate in-service dates as an option that can be exercised by the Company. Proposals for firm online dates beyond June 1, 2016 are not allowed; however, Bidders can request approval with the IE to submit proposals having firm online dates prior to June 1, 2016.”

*See Redlined RFP, page 25.*

6. *Modification to Treatment of Long-term Resources in Step 2 of the Evaluation Process, Section 6(B), The Evaluation Process, subsection (2) Step 2 – System Optimizer Capacity Expansion Model – Optimized Portfolio Development:* The Company has modified Section 6.b.2, Step 2 – System Optimizer Capacity Expansion Model – Optimized Portfolio Development, of the RFP to clarify that the Company will not fix long-term natural gas resources, as discussed in the Reply Comment section below.

“The starting point for System Optimizer portfolio development is the set of preferred resources and input assumptions that will be consistent with PacifiCorp’s 2011 IRP. The resource in the year for which there is a capacity need as defined by the resource portfolio will be removed in order to create a capacity deficit that the model must fill with one or more bid resources. (The model will also be allowed to select a variable quantity of firm market purchases, or “front office transactions” to ensure that a specified annual planning reserve margin is maintained throughout the simulated period.) If assumption updates are made prior to the receipt of Bidders’ best and final pricing for proposals selected to the initial shortlist which affect the timing and/or size of the resource need, the portfolio may be revised

accordingly. Resources not removed to create a capacity deficit, except for front office transactions, and natural gas-fired supply resources, will be fixed for all portfolios to remove the impact of out-year resource optimization on bid resource selection.”

*See Redlined RFP, Page 56.*

7. *Modification of “Chart 1”, and Sections 1 “PPA”, 2 “TSA”, 4 “APSA on a Bidder’s Site”, 5 “Purchase of an Existing Facility, 6 “Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp”, and 7 “Restructure of an Existing PPA or an Exchange Agreement and/or Buyback of an Existing Sales Agreement” to incorporate the limitation to coal to less than five (5) years in each of the “Eligible Resources”. The Company has clarified that coal resources in each Resource Alternative is limited to a maximum term of less than five (5) years.*

*See Redlined RFP, pages 12-22.*

8. *Additions to Section 3.H.5., “Procedural Items, Accounting”:* The Company has added the following language to the second paragraph of Section 3.H.5., Accounting, which reflects the current FASB Financial Accounting Standards:

“Specifically, given the term lengths that PPA, TSA, and/or exchange proposals may cover in response to this RFP, accounting and tax rules may require either: (i) a contract be accounted for by PacifiCorp as a Capital Lease or Operating Lease<sup>1</sup> pursuant to Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 840 (formerly SFAS No. 13), or (ii) the seller or assets owned by the seller, as a result of an

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<sup>1</sup> “Capital Lease” and “Operating Lease” - shall have the meaning as set forth in the FASB ASC Topic 840 as issued and amended from time to time by the Financial Accounting Standards Board.

applicable contract, be consolidated as a Variable Interest Entity<sup>2</sup> (VIE) onto PacifiCorp's balance sheet. To the extent a Bidder's proposal results in an applicable contract, the following shall apply with respect to VIE treatment." See Redlined RFP, page 36.

### **B. Reply Comments to IE, Division, OCS and UAE**

The Company offers the following reply comments to the comments from the IE, which, with a few exceptions<sup>3</sup>, capture all of the comments from the Division, the Office and UAE raised in their respective comments:

1. PacifiCorp has taken both positive and negative steps with regard to comparability of resources for evaluation purposes. On the positive side, PacifiCorp has included an alternative that allows Bidders to provide pricing/security structures. In addition, PacifiCorp has provided additional flexibility and potential reduction in costs by providing a phase-in security posting schedule that reaches 100% of the security required by the eligible on-line date;

Response: The Company agrees with the IE; however, the Company also clarifies that the credit matrix will be used to determine the amount of credit assurances required if a Bidder makes the Final Shortlist. Twenty (20) business days after short listing, the Bidder will be required to provide any necessary form of commitment letter (Attachment 15) regarding these credit assurances. The Bidder and the Company will then enter into negotiations which may result in the requirement that the Bidder post additional or alternative credit assurances depending on the Resource Alternative being bid, consistent

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<sup>2</sup> "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in the FASB ASC Topic 810 (formerly FIN 46) as issued and amended from time to time by the FASB.

<sup>3</sup> The Company will address such comments at the end of this document.

with the terms and conditions of the underlying proforma agreement for that Resource Alternative.

2. PacifiCorp has proposed not offering a benchmark bid into the RFP, instead offering Bidders the alternative to submit EPC bids at the existing Currant Creek site. While detailed EPC options at a Company site vetted through a solicitation process could provide a reasonable alternative to a utility benchmark, the IE is concerned about the prospect of only one or two EPC proposals being submitted. Another use of a benchmark resource is to establish a “cost to beat” if there is limited competition. The presence of such a benchmark can serve as a guide for PacifiCorp to decide whether to select a resource from the RFP.

The IE comments that one of the revisions to the RFP relative to the 2008 RFP with regard to resource alternatives proposed by the Company is the elimination of an Asset Purchase and Sale Agreement (“APSA”) on an identified PacifiCorp site (Currant Creek). The IE summarizes that the fundamental difference between an EPC and an APSA is that with an APSA a third-party (be it a project developer or EPC contractor) would be responsible for project development activities while with an EPC, the utility would likely be involved in project development activities. To maximize the potential for competition at the Currant Creek site, the IE recommends that PacifiCorp consider allowing both EPC and APSA options to bid.

Response: The Company clarifies that the EPC category in this RFP means that there will be one RFP as opposed to two separate RFPs. The Company believes this is a more effective means of establishing a competitive Company-owned resource option. The RFP will allow for the most competitive EPC bid to be compared to all of the other Eligible Resource categories on a comparable basis without having to run two separate RFP processes. This also allows all of the potential EPC counterparties to compete under one

process instead of splitting the EPC counterparties into two separate RFPs. The feedback the Company received from both EPC counterparties in the benchmark process and the prior All Source RFP is that they want to compete in one process and not be a stalking horse in one RFP process for another RFP process. There is no reason to believe that a separate EPC RFP process would yield more EPC bids than the alternative of including an EPC category in this RFP. The Company believes that including the EPC category in this RFP will result in the least cost for customers as all of the potential EPC vendors will be competing against one another under the same rules and timelines and not under two separate RFP processes.

The Company also agrees with the IE that in order to ensure the optimal competition at the Currant Creek site that an APSA should be allow to bid at the site. Attachment 8 provides the Development costs and Attachment 7 provides the Owners Cost under the EPC.

3. PacifiCorp has proposed to fix resources for all portfolios to remove the impact of out-year resource optimization on bid resource selection. The IE does not believe PacifiCorp has provided adequate justification to propose a fixed resource plan as a response to the Commission's statement that allowing future resources to float has "merit". The IE recommends that PacifiCorp provide an assessment of the pros and cons of conducting the evaluation process under the assumption of fixed versus floating future resource additions;

Response: The Company agrees with the IE and the Division to a certain extent. The Company is willing to allow post 2016 front office transactions and gas resources to float. However, the Company does not agree that wind, DSM and other resources should be allowed to float.

The quantity of wind in the preferred portfolio was based on the results of a number of scenarios and was chosen based on what the Company believes is reasonable given the assumption of a green future (potential CO2 tax, federal RPS, extension of federal credits,



etc.). The amount of wind in the preferred portfolio is fixed to address this risk. If wind was allowed to float in the RFP bid analysis, the Company would need to re-do the preferred portfolio allowing wind to float, thereby changing the risk profile of the preferred portfolio. This would be required in order to have a base portfolio that could be fairly compared to the alternate portfolios that contain bids. The Company does not believe it is reasonable to alter the risk profile of the preferred portfolio for the purpose of conducting the RFP bid analysis. The inputs and analysis used in the IRP incorporate and mitigate the risk of a green future by addressing fuel diversity risks, which would not occur if wind resources are allowed to float. In addition, allowing a natural gas-fired plant to displace wind resources would create a different risk profile that would need to be addressed in the RFP bid analysis process. The same rationale to not allow wind to float can be applied to DSM. The Company believes it is important that its renewable resource and DSM acquisition program identified in the IRP remain intact. However, if wind resources were acquired prior to locking down the assumptions, then those wind resources in the preferred portfolio would be removed. The Company has amended Section 6 of the RFP as set forth in Section A.6. above.

4. PacifiCorp has revised the methodology and metric it has used in the past to calculate the price score in Step 1 of the evaluation process. The IE requests that PacifiCorp provide an explanation supporting the change in methodology and provide an example of the proposed metric for determining the price score.

Response: The Company did not intend to change the methodology or metric. The Company had only intended to simplify its explanation of how the price score would be calculated and does not intend to change how price scores will be calculated in Step 1 of the evaluation process. The Company intends to continue to rely on the PVRR metric expressed

on a \$/kW-mo basis. To clarify, the Company will amend Section 6 of the RFP as set forth in Section A.1. above.

5. One issue that occurred in the 2008 All Source RFP process was that one bidder was eliminated because it violated the allowable 10% increase in bid price between the indicative bid and best and final offer. While all other bids met the 10% limit, the IE believes that PacifiCorp should clarify how the 10% limit will be calculated and applied.

Response: The Company agrees with the IE and will clarify the calculation of the 10% increase, by adding a paragraph to Section 6 of the RFP, as set forth in A.2. above.

6. The Credit Methodology used by PacifiCorp is a sophisticated and reasonable process which continues to evolve. The credit methodology and credit matrix is largely consistent with the recent approach used by PacifiCorp for assessing the security requirements of Bidders. The application of the methodology has resulted in a lower level of security required in the 2016 All Source RFP relative to the 2008 All Source RFP due to recent decrease in gas and power prices and lower price volatility.

Response: The Company agrees with the IE.

7. The 2016 All Source RFP contains a number of revisions to the allowable delivery points in both PACE and PACW as well as clarifying the impacts of transmission line construction on the timing of project in-service dates. Given the revisions in the RFP associated with transmission issues and the importance and complexity of transmission cost impacts and access, the IE recommends that PacifiCorp offer a Transmission workshop for Bidders to coincide with the Bidders Conference after issuance of the final RFP.

Response: The Company agrees with the IE and intends to conduct a Transmission workshop February 2012.

8. PacifiCorp has proposed to limit coal options to contract terms up to -5 years. Based on this requirement, this may limit new or existing coal projects from participate in the RFP, potentially removing a competitive resource option. The IE recommends that PacifiCorp issue two RFPs, similar to the 2008 All Source RFP, with coal treated as an Eligible Resource option for the Utah RFP. The Division recommends that the Company provide further clarification regarding the limitation to coal.

Response: The Company agrees with the Division and adds clarification to each of the Resource Alternatives in Section 2 Resource Alternatives and Proposals Characteristics under subsection 8. Coal is limited to a maximum term of less than five years. 9. PacifiCorp has proposed several changes with regard to indexing of prices. First, PacifiCorp has proposed eliminating the option that all Bidders had to index a portion of their capital cost or capacity prices to selected indices. PacifiCorp cites the fact that no bid on the short list for the 2008 All Source RFP selected any price indexing options for capital or capacity-related costs. Second, PacifiCorp also proposed to eliminate indexing for both fixed and variable operations and maintenance costs. The IE recommends that PacifiCorp be required to reinstate indexing for both capital/capacity related costs as well as fixed and variable operation and maintenance costs to allow Bidders to reflect the cost structure and market risk in their pricing formulas, Even if the Commission decides to approve PacifiCorp's proposal to eliminate indexing of capital and capacity related costs, indexing for operation and maintenance costs should definitely be reinstated;

Response: The Company agrees with the IE on indexing the operation and maintenance costs and will reinstate the language as set forth in section A.4. above, to allow Bidders to index such costs. However, the Company disagrees with the IE's proposal to also index capital/capacity costs for several reasons. First, EPC vendors have indicated that

indexing is not a viable option because there isn't a good index that correlates well to their actual costs. Second, the option for EPC bids to include partial indexing was originally put in place to allow Bidders the opportunity to submit a partially floating bid and lock in a fixed price once their EPC contract was executed. Third, the RFP now has a two step process to allow Bidders to submit firm proposals with an update at the second stage, thus accomplishing the same goal as the index option originally intended. Fourth, the initial shortlist provides for a screening process that results in a list of Bidders who are then asked to provide best and final bids. Fifth, Bidders have indicated that they expect their final firm price to be within ten percent of their initial EPC bid price, however, they need to do a much more comprehensive bottom up cost analysis in order to provide a firm price. Sixth, the bottom up cost analysis to support a firm bid requires the EPC vendors to expend significant financial and human resources. EPC vendors are not willing to do that unless they are on the initial shortlist given their belief that once they are on the initial shortlist, they have a reasonable chance of being selected. Seventh, the 2009 Resource RFP process indicated that bidders are willing to provide fixed pricing thereby eliminating cost uncertainty under an indexed bid process.

10. The IE has some concerns with the proposed schedule for the 2016 All Source RFP. In particular, PacifiCorp proposes a longer period between the time of issuance of the RFP and the due date for bids. As a result, the time allotted to complete the short list evaluation and the time for preparing a best and final offer has been reduced. The IE has proposed a slightly revised schedule designed to provide addition time for the bid evaluation and best and final offer but reduces the time available to prepare the initial bid to be consistent with the 2008 All Source RFP.

Response: The Company agrees that time to submit initial bids could be reduced, however not to the extent recommended by the IE. The Company agrees with the IE regarding allowing sufficient time to evaluate short listed bids. The Company has provided a modified schedule between initial shortlist and best and final shortlist to address the IE concerns. The development of lump sum pricing for large EPC projects is a complex process and providing EPC bidder's adequate time to prepare bids is critical to obtain quality proposals.

11. PPA Buyers are offered more cost protection from unanticipated changes than EPC Buyers. This protection applies even for changes that result in costs which are prudently incurred by PPA Sellers. EPC Buyers in many cases would absorb the same prudently incurred increases in cost. Protection comes at a price and overall PPA charges should be expected to be higher in typical projections of life cycle costs. Whether extra costs are absorbed later by EPC Buyers in amounts that exceed the originally higher estimates of PPA charges cannot be known at present.

Response: The Company agrees that it is difficult to know whether there would be any costs at this point in time.

12. PacifiCorp did not include a Code of Conduct with the RFP. The IE believes that PacifiCorp should include a Code of Conduct as in previous RFPs since the EPC option will be built on a PacifiCorp site.

Response: The Company has added the communication requirements between the IE, the Bidders and the Company to Attachment 18 which attachment provides specific requirements between the benchmark and the evaluation team in the RFP since the Company is not bidding a benchmark resource in this RFP. In addition, the Company has also deleted

the term “benchmark” in Attachment 18 since the Company does not have a “benchmark”, as set forth in the redlined copy of, Attachment 18, filed concurrently herewith.

13. Uncertainty of the category a Bidders would fall under – Intermediate vs. Base load. In the view of the IE, PacifiCorp’s approach included in Footnote 7 unduly penalizes Bidders relative to the effort required to undertake this assessment. Under PacifiCorp’s approach, a bidder will be required to post a bid fee of an additional \$10,000 if it wants its bid evaluated within both the Base Load and Intermediate categories. Instead of this approach, we recommend PacifiCorp consider each of the options identified above. PacifiCorp is in a much better position based on its knowledge of its system and modeling capabilities to determine if a particular proposal will operate at a greater than 60% capacity factor or between 20-60% based on its heat rate and variable fuel and operating costs.

Response: The Company does not agree that bid fees for additional analysis should be waived. The Company’s actions to not waive bid fees are consistent with its practice in the previously approved 2008 All Source RFP which transpired after having significant discussions with the Bidders on how to develop the three resource categories. The Company believes Bidders are sophisticated enough to best understand which category they should bid into. The Company believes that offering Bidders the opportunity to bid into any category at no cost will encourage them to bid into all categories regardless of the resource. In addition, the Company should not be responsible for trying to categorize the multiple bids that Bidders will inevitably provide. The Company is not in the best position to determine how to categorize the bids as these are the Bidders’ generation resources. The Company does not want to run the risk of having a disgruntled bidder if the Company categorizes Bidders bids incorrectly. To reiterate, the Company firmly believes that Bidders are sophisticated enough

and are able to determine which category they should bid into. To the extent Bidders want to bid into both categories, they should pay two bid fees. To date, the Company has not had any Bidders complain that the bid fees are too high. Further, the bid fees are used to offset the cost of the IE.

14. The Independent Evaluator comments regarding Accounting indicated that the FASB Financial Accounting Standards and the reference in the footnotes to Section 3.H.5 may not be the latest standards.

Response: The Company agrees with the IE and has updated Section 3.H.5 and the footnotes to reflect the updated Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) Topic 840 (formerly SFAS No. 13), as set forth in Section A.8 above.

15. In regard to “Bidder Litigation,” the Division questions the propriety of allowing into the bidding any entity that is in, or threatening, litigation against PacifiCorp. The Division is of the opinion that \$5 million is too high a threshold for materiality.

Response: The Company agrees with the Division in that if a counterparty is either threatening or in litigation that the Company should not be required to accept its proposal. The Company offers to modify the language in the RFP by removing \$5 million as the threshold. The Company will work with the IE to determine if the Bidder should be excluded in the event it is threatening or in litigation with the Company as a means to exclude it from participating in this All Source RFP.

16. The Division noted that under the section “Flexibility of Proposals” the RFP includes language regarding terms “which provide PacifiCorp the ability to defer or accelerate the in-service date of the contract ...” In answer to the Division data request DR1.5, the Company appears to say that only acceleration (i.e., earlier than requested June

2016 in-service date) of the in-service date will be considered. The Company should rewrite the language in the RFP to clarify what it means in its discussions of deferral and acceleration.

Response: The Company agrees with the Division and has modified the language in the RFP as set forth in Section A.5 above.

17. The Division noted several typographical edits which the Company adopted in the redlined RFP, filed concurrently herewith.

### **Conclusion**

The Company understands the importance of developing a transparent and fair process consistent with the Commission's guidelines and believes that the revised final draft RFP accomplishes these goals.

DATED: December 7, 2011

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## CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of December, 2011, I caused to be delivered a true and correct copy of the foregoing Comments of PacifiCorp to the following service list in Docket No. 11-035-73:

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